



Property settlement in accordance with Commonwealth Family Law legislation and the Police Superannuation Act - splitting of superannuation interests.



The *Police Superannuation Act 1990* (the Act) and *Police Superannuation Regulations 2002* include provisions to complement the Commonwealth's *Family Law Act and Regulations*.

Combined, these Acts allow for the division of superannuation benefits in the same manner as other assets in the event of a breakdown in a marriage or relationship which ultimately results in a property settlement between the parties. Whilst a superannuation interest is not required to be split by law, the value of the superannuation interest is to be considered when negotiating property settlement and the sharing of accrued assets. It will be up to the splitting parties as to whether superannuation interests need to be split or whether the parties can share other assets to offset the value of the superannuation interest. For the purpose of family law matters, reference to the splitting parties are referred to as:

- **Member spouse** – the actual member with either (a) an account held in the SA Police Superannuation Scheme (the Scheme), or (b) separated from SAPOL and in receipt of pension benefits.
- **Non-member spouse** – the spouse, or putative spouse of the Scheme member in either scenario above.

To request a superannuation interest valuation an application (Form 6) must be lodged with Police Super prior to the release of a Member spouse's superannuation value to the applicant. Either party, or a legal representative on their behalf, may request superannuation information by way of the Form 6. Police Super has an in-house Form 6 which can be obtained from the Police Super [website](#). Alternatively, the Family Court of Australia provides a Form 6 as part of its [Superannuation Information Kit](#). On receipt of a completed Form 6, Police Super can calculate the value of the Member spouse's superannuation interest and provide this value to the applicant 'in confidence'. Currently there is no cost to either party in requesting a Form 6 valuation.

The value of a superannuation interest held by the Member spouse is calculated using the methods and factors prescribed in Commonwealth Family Law legislation. These formulas have been specifically designed for superannuation interests in a public sector defined benefit superannuation fund and caters for all benefit-types payable at various ages within Police Super, including the Productivity lump sum.

Growth phase value is a lump sum calculated using the method and factors approved by the Commonwealth Attorney-General in terms of Regulation 43A of the *Family Law (Superannuation) Regulations 2001*. The *Family Law (Superannuation) (Methods and Factors for Valuing Particular Superannuation Interests) Approval 2003* sets down the method and factors to be used in calculating superannuation interests held by Scheme members.

Payment phase value is the gross fortnightly benefit payment made to the Member spouse. There is no requirement to convert this amount to a lump sum value as the superannuation interest for the Non-member spouse is a *percentage share* of the gross pension. On establishing the Non-member spouse's share, there are payment options available. Regulation 38 of the *Family Law (Superannuation) Regulations 2001*, Section 38 of the *Police Superannuation Act 1990* (SA) and *Police Superannuation Regulations 2017* are applicable to superannuation interests in the payment phase.

Prior to agreeing to a split. A superannuation split results in a permanent reduction to all superannuation benefit types payable to a Member spouse in both phases. It is recommended Scheme members seek qualified financial advice prior to agreeing to a split as there are no means within Police Super legislation to enable the Member spouse to make-up for a superannuation split.

How a split occurs. The splitting of a Member spouse's superannuation interest can only be made by the serving of a 'splitting instrument' to the Trustees of the SA Police Superannuation Scheme, the Police Superannuation Board. To be lawful, splitting instruments are either a:

1. **Binding Financial Agreement** – property settlement agreed to and signed by both parties, overseen, and witnessed by Solicitor(s) without the need for court involvement; or

2. **Court Order** – property settlement agreed to by both parties, lodged with and sealed by the court. This method can be arranged by employing Solicitors or actioned between the parties themselves without solicitor involvement i.e. the Commonwealth Family Court provides guidelines and templates for individuals who prefer to undergo property settlement, prepare, and lodge consent orders to the court themselves. Further information can be obtained from the [Family Court website – property and finance](#)

The superannuation split can either be (a) a *dollar amount* (referred to as the ‘*base amount*’) which represents a share of the total value of the superannuation interest; or (b) a ‘*specific percentage*’ of the interest to be shared with the Non-member spouse. Generally, a *base amount* is prescribed where the Member’s super interest is in the growth phase; and a *specific percentage share* is applied where a Member is in the payment phase. The Non-member spouse may then elect to receive their percentage in one of three ways (see page 2).

Growth phase (i.e. either the Member spouse is a contributing member to the Scheme and not yet separated from SA Police); or is separated from SAPOL and has preserved accounts within the Scheme) the Non-member spouse will receive a lump sum payment.

The **Member spouse’s superannuation account** is reduced by the equivalent contribution points, which permanently reduces the percentage of pension payable at all ages; and a reduction to the equivalent months, which permanently reduces the amount of productivity lump sum payable. The reduction as a result to the Member spouse’s superannuation benefits will be reflected in benefit quotes and advised to the Australian Taxation Office (ATO).

The **Non-member spouse’s superannuation interest** cannot remain within the Scheme and must be rolled over to another complying superannuation fund. The prescribed period in which to nominate a superannuation fund for this purpose is 28 days from the operative date. Should an election not be made in the prescribed time, the Scheme is within its rights to rollover the lump sum to a Triple S account within Super SA, which is the Scheme’s default super fund for this purpose.

The Non-member spouse’s lump sum will consist of a tax-free component being a share of the Member spouse’s *undeducted contributions*; and the remainder will form a taxable-untaxed component, for which the Non-member spouse’s nominated rollover fund will most likely deduct tax on entry. The eligible service date for the Non-member spouse is the *operative date* set down in the splitting instrument. The operative date is the date used to open an account for the Non-member spouse within the Scheme simply for the purpose of processing the superannuation split and reporting the same to the Australian Taxation Office. A Non-member spouse is NOT entitled to a share of any pre’ July 1983 tax-free component the Member spouse may have attached to their account. In addition, a lump sum superannuation split to a Non-member spouse is subject to:

- Commonwealth taxation laws relating to *untaxed* super funds; and
- Commonwealth preservation laws, which generally mean the lump sum is not payable to the Non-member spouse until a condition of release is met such as permanent retirement from the work force on or after reaching their Commonwealth Preservation Age.

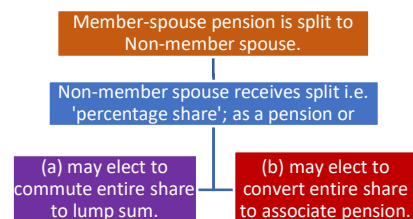
Payment Phase is where the Member spouse has separated from SAPOL and is in receipt of pension payments as at the operative date.

The **effect to the Member spouse’s pension** is that their gross pension is reduced by the percentage stated in the splitting instrument. This is known as the ‘*percentage share*’ and is payable to the Non-member spouse. Police Super will notify the Member spouse of their reduced pension gross, tax, and any deductions. In addition, Police Super will also provide an Australian Taxation Office (ATO) issued form known as a *Transfer balance event notification* (NAT 74919). This form is to be completed by the Member spouse and provided to the ATO, which is a request to reduce their Transfer balance cap (TBC) amount due to the split. A TBC is the amount Police Super are required to calculate and report to the ATO on 1 July 2017 or where the Member spouse retires after that date, the TBC value at that date. In addition, Police Super will provide the Member spouse with a Capped Defined Benefit Income Stream form which confirms the new pension value, in the event the Member-spouse is in receipt of benefits, which will need to be recalculated due to the reduction to police pension income.

The Non-member spouse is entitled to a direct *percentage share* of the Non-member spouse's gross pension in the first instance, and payable to the Non-member spouse from the operative date. An account in Police Super is opened for the Non-member spouse at the operative date, and the percentage share is payable from that date. Police Super will advise the Non-member spouse in writing of this fact and the value of their percentage share, tax etc. In addition, the Non-member spouse will be informed of the alternate payment options available to them.

Important note! *The percentage share is linked to the Member spouse's pension in that if there is a reduction to the Member spouse's pension for any reason, the Non-member spouse's pension is also reduced. Furthermore, the Non-member spouse's pension ceases to be paid upon the death of the Member spouse.*

Alternate payment options. The Act provides the Non-member spouse with a period of three (3) months from the operative date of the splitting instrument in which to elect an alternate payment option to that of the percentage share. These are outlined in (a) and (b) below. If no election is made within the given time, the Non-member spouse will continue to receive their percentage share, which is linked to the Non-member spouse (as in 'Important note' above).



a) **Option to commute the percentage share entirely to a 'lump sum'.**

There is NO option for part commutation. Once the lump sum is processed and paid, the Non-member spouse's account in Police Super is closed, and no further entitlements are payable thereafter.

The commutation lump sum cannot remain within the Scheme and must be rolled over to another complying superannuation fund. The prescribed period in which to elect a superannuation account and fund for this purpose is 28 days from the election date. Should an election not be made in the prescribed time, the Scheme is within its rights to rollover the lump sum payment to a Triple S account within Super SA, which is the Scheme's default super fund for this purpose.

The eligible service date for the Non-member spouse is the *operative date* set down in the Order or Binding Financial Agreement. The operative date is the date used to open an account for the Non-member spouse within the Scheme simply for the purpose of processing the superannuation split and reporting the same to the Australian Taxation Office. A Non-member spouse is not entitled to a share of any pre' 83 tax-free component the Member spouse may have attached to their account. In addition, a lump sum superannuation split to a Non-member spouse is subject to:

- Commonwealth taxation laws relating to *untaxed* superannuation funds; and
- Commonwealth preservation laws, which generally mean the lump sum will not be available to the Non-member spouse until a condition of release is met e.g. permanent retirement from the work force on or after reaching their Commonwealth Preservation Age.

b) **Option to convert the percentage share to a separate 'associate pension'.** In electing this option, the Non-member spouse's account within Police Super is converted to an associate pension which is calculated using the methods and factors set down in both the Commonwealth and Police Super legislations. An associate pension is a pension in the Non-member spouse's *own right* and is NOT linked to the life of the Member spouse, meaning unlike the *percentage share*, the pension is payable to the Non-member spouse for their lifetime. There is NO option to commute an associate pension. This pension is subject to adjustments for the Consumer Price Index (Adelaide) in April and October of each year. There are no reversionary beneficiary rights attached to this pension, nor are there any residual benefits payable to the estate upon the death of the Non-member spouse.

Further information and legislation pertaining to family law and superannuation splitting is available at:

Police Superannuation Act (refer Part 5b-Family Law Act)	Police Superannuation Regulations 2017 , (refer Parts 2 & 3)
Family Law Act 1975 (refer Volume 2, Part VIII B)	Family Court website – property and finance Superannuation Information Kit
SA Police Superannuation Scheme	Level 1 South, 70 Hindmarsh Square, Adelaide SA 5000 (Internal Pcode 128)
ABN: 68 265 633 782	Phone: (08) 8470 0370
Email: admin@policesuper.sa.gov.au	Web: www.policesuper.sa.gov.au